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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/055,751

01/23/2002

Gustav P. Kuelbs

0638MH-40822CIP

9125

50779

7590

10/21/2005

WORLD FACTORY, INC.

c/o LAW OFFICES OF JAMES E. WALTON, P.L.L.C.

1169 N. BURLESON BLVD.

SUITE 107-328

BURLESON, TX 76028

EXAMINER

FADOK, MARK A

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,751

Applicant(s)

KUELBS ET AL.

Examiner

Mark Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 92-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 92-96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

EA N

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 1/24/2005, which was received 7/28/2005. Acknowledgement is made that no amendments were made leaving claims 92-96 as pending in the instant application. The applicant's arguments have been carefully considered and were found not to be persuasive, therefore the previous rejection is restated below:

Priority

The applicant directs arguments towards the priority of the instant invention. The examiner notes that the features to which the applicant claims in claim 92 specifically paragraph (d) are first provided in applicant's instant application (see FIG 31B), therefore the priority given to the invention is that of the application date of the instant application.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are

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applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(e) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 92-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pallakoff (US 6,269,343) in view of Tuttrup et al (US 2002/0038266).

In regards to claim 92, Pallakoff discloses a method of selling articles over a distributed data processing system, comprising:

- (a) identifying a product utilizing said distributed data processing system (FIG 2),
- (b) soliciting purchase commitments from potential purchasers over said distributed data processing system (Fig 3);
- (c) accepting contingent offers which depend upon obtaining a predetermined minimum number of offers before acceptance of said offers (Fig 3); and

Pallakoff teaches displaying information to notify aggregated buyers whether or not a sufficient number of items have been sold to meet required shipping levels and alternate threshold demands (FIG 2 and FIG 3), but does not specifically mention that the threshold that is displayed is the shipping space of a container (consolidation). Tuttrup teaches consolidating orders of items bought over the Internet for shipment to a customer to save shipping costs (Summary). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Pallakoff consolidating shipments and presenting this information to the buyer because this would centralize the shipping process to allow vendors to gain the benefit of consolidated shipping and to provide significant cost and convenience advantages to consumers (Tuttrup, page 1, para 0012), furthermore the offer can be canceled if insufficient demand is realized (col 5, lines 30-40).

a visual representation over time that indicates whether or not sufficient financial commitments have been obtained from a plurality of potential purchases to reach a threshold (filling of a shipping container) (FIG 2).

In regards to claim 93, the combination of Pallakoff and Tuttrup teach
(e) wherein said distributed data processing system includes a user interface which facilitates (1) gathering of information from potential purchasers and (2) presenting dynamically changing information to said potential purchasers (Fig 3).

In regards to claim 94, the combination of Pallakoff and Tuttrup teach (f) utilizing said distributed data processing system to identify a plurality of articles of manufacture which are different from one another and which are available for purchase by said plurality of potential purchasers (Fig 4).

In regards to claim 95, the combination of Pallakoff and Tuttrup teach (g) wherein said plurality of articles of manufacture are, or will be, located sufficiently physically proximate to one another prior to shipment to justify a consolidation and coordination of loading-for-shipping operations (Tuttrup, page 4, para 0052).

In regards to claim 96, the combination of Pallakoff and Tuttrup teach (h) wherein each of said plurality of articles of manufacture has particular shipping constraints associated therewith, including at least one of the following particular shipping constraints:

- (1) shipping origin;
- (2) shipping destination;
- (3) production completion date;
- (4) product volume and weight; and
- (5) product packaging (Tuttrup page 4, para 0052).

Response to Arguments

Applicant's arguments filed 7/28/2005 have been fully considered but they are not persuasive.

The examiner concurs that the 103 (a) rejection was incorrect and has changed the rejection to 103(e).

Applicant argues that the priority date of the instant application overcomes the prior art cited by the examiner. The examiner disagrees and notes that the features in claim 92, specifically paragraph (d), are first provided in applicant's instant application (see FIG 31B), therefore the priority given to the invention is that of the application date of the instant application.

Applicant requests that the examiner provide documentary evidence to support the Official Notice taken by the examiner. In retrospect the examiner provides FIG 2 of Pallakoff as evidence of the indicator being presented to the buyer.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, motivation is stated from the specifications of both Pallakoff and Tuttrup.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(571) 273-8300 [Official communications; including

After Final communications labeled

"Box AF"]

(571) 273-6755 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]



Mark Fadok

Primary Examiner